

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06

ACDA-05 IO-11 /075 W

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R 121355Z FEB 76

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AMEMBASSY BERLIN UNN

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AMEMBASSY PARIS

USMISSION NATO

C O N F I D E N T I A L USBERLIN 0256

E.O.11652: GDS

TAGS: PGOV, PFOR, WB, GW, UR

SUBJECT: SOVIET PROTEST AT FEDERAL ADMINISTRATIVE
COURT DECISION

REF: USBERLIN 0247

1. SUMMARY: SOVIET RESEARCH APPEARS TO HAVE BEEN
FAULTY. FEDERAL ADMINISTRATIVE COURT HEARD AND DECIDED
CASE OBJECTED TO BY SOVIETS FEBRUARY 10 IN TRIER
RATHER THAN BERLIN. WE HAVE RECOMMENDED RESPONSE
POINTING OUT THIS FACT, REBUTTING ALLEGATIONS ABOUT
ILLEGALITY OF FEDERAL INSTITUTIONS IN BERLIN IN
GENERAL TERMS, AND REMINDING SOVIETS THAT IT IS THEY
NOT ALLIES WHO NEED TO EXERCISE MORE CARE ON DEMIL-
ITARIZED STATUS OF CITY. END SUMMARY.

2. CASE TO WHICH SOVIET STATEMENT REFERRED INVOLVED
CITY IN NECKAR VALLEY THAT RESISTED EMPLACEMENT OF
MINES IN BRIDGES THAT, PURUSANT TO NATO CONTINGENCY
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PLAN, WOULD BE EXPLODED TO IMPEDE ADVANCE OF INVADING

ARMY. FEDERAL ADMINISTRATIVE COURT UPHOLD LOWER COURTS ON SEPTEMBER 16, 1975 RULING THAT NATO PLANS ARE NOT SUBJECT TO LOCAL OR JUDICIAL REVIEW, AND THAT IT IS SUFFICIENT IF THEY ARE DEFENSE PLANS PROPERLY APPROVED BY FRG DEFENSE COUNCIL WITHIN SCOPE OF FRG'S OBLIGATIONS UNDER NATO ALLIANCE.

3. SUCH DECISIONS OF FEDERAL ADMINISTRATIVE COURT ARE ONLY SUMMARIZED FOR PUBLIC CONSUMPTION, WE ASSUME SOVIETS SAW SUCH A SUMMARY OR, MORE LIKELY SINCE THEY WERE SO SCANTY IN THEIR DETAILS, ARTICLE WHICH DIE WELT RAN ON DECISION JANUARY 12, 1976. SOVIETS PRESUMABLY THOUGHT FACTS AS DESCRIBED IN NEWSPAPER OFFERED GOLDEN OPPORTUNITY TO POINT UP INCONGRUITY OF LOCATION FEDERAL COURTS AND OTHER FEDERAL INSTITUTIONS OUTSIDE FRG BORDERS. WHILE ONE MIGHT ARGUE AS GENERAL MATTER THAT NOTHING IN DECISION WAS EXPRESSED AS APPLYING TO BERLIN AND THAT, VIRTUALLY BY DEFINITION, EXERCISE OF PROPERLY CONSTITUTED JUDICIAL FUNCTION IS NOT MILITARISTIC EXERCISE. THERE APPEARS TO US TO BE BETTER REBUTTAL AVAILABLE OF WHICH SOVIETS PROBABLY ARE NOT AWARE.

4. FEDERAL ADMINISTRATIVE COURT IS PERMANENTLY LOCATED IN BERLIN, AND SOVIETS PRESUMABLY JUMPED TO CONCLUSION THAT THIS CASE MUST HAVE BEEN DECIDED IN CITY. WHEN WE OBTAINED COPY OF DECISION FROM COURT, HOWEVER, ONE OF JUDGES TOLD US THAT IT IS STANDARD PROCEDURE FOR COURT TO HOLD ONE OR TWO SESSIONS A YEAR IN FRG. GIVEN SUBJECT MATTER, CHAMBER WHICH HANDLED CASE DECIDED THIS WAS APPROPRIATE ONE TO DEAL WITH IN FRG RATHER THAN BERLIN. CASE WAS ACCORDINGLY HEARD AND DECIDED IN TRIER, AND TEXT OF DECISION SO NOTES. WE THUS THINK THAT GROUND ON WHICH SPECIFIC SOVIET OBJECTION BASED CAN RATHER EASILY BE COUNTERED. WE MIGHT THEN DEAL WITH GENERAL ATTACK ON LOCATION OF FEDERAL COURTS AND OTHER FEDERAL INSTITUTIONS IN BERLIN BRIEFLY BY GENERAL STATEMENT AND THEN COUNTERATTACK BY CONTRASTING ALLIED CONCERN TO PRESERVE ALL ASPECTS OF DEMILITARIZATION IN OUR SECTORS

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WITH DAILY VIOLATIONS IN SOVIET SECTOR.

5. FOLLOWING IS TEXT OF DRAFT RESPONSE WE HAVE CIRCULATED TO ALLIED MISSIONS FOR VIEWS AND ULTIMATE REFERRAL TO EMBASSIES:

BEGIN TEXT: THE ALLIED AUTHORITIES HAVE REQUESTED ME TO MAKE THE FOLLOWING RESPONSE TO THE SOVIET STATEMENT

OF FEBRUARY 10. THE DECISION OF THE FEDERAL ADMINISTRATIVE COURT REFERRED TO IN THE SOVIET STATEMENT APPEARS TO HAVE BEEN THAT OF SEPTEMBER 16, 1975. THE FIFTH CHAMBER OF THE COURT HEARD THE CASE AND HANDED DOWN ITS DECISION IN TRIER. THE COURT'S ACTION HAD NO CONNECTION WHATSOEVER WITH BERLIN. THERE IS THUS NO POSSIBLE BASIS FOR THE ALLEGATION THAT THIS MATTER WAS IN ANY WAY IN VIOLATION OF THE STATUS OF BERLIN OR OF ANY PART OF THE QUADRIPARTITE AGREEMENT OF SEPTEMBER 3, 1971.

THE FEDERAL ADMINISTRATIVE COURT HAS, OF COURSE, BEEN LOCATED IN THE WESTERN SECTORS OF BERLIN FOR MORE THAN TWENTY YEARS. ITS OPERATIONS, LIKE THOSE OF ALL OTHER FEDERAL INSTITUTIONS IN THE CITY, ARE IN ACCORDANCE WITH THE LAWS IN FORCE IN THE WESTERN SECTORS AND SUBJECT TO ALLIED RIGHTS AND RESPONSIBILITIES. THE SUGGESTION THAT THIS IS IN SOME MANNER IN VIOLATION OF THE QUADRIPARTITE AGREEMENT OF SEPTEMBER 3, 1971 IS COMPLETELY WITHOUT BASIS.

THE ALLIED AUTHORITIES WOULD LIKE TO TAKE THIS OCCASION TO RECALL TO THE SOVIET AUTHORITIES THAT THE SCRUPULOUS ADHERENCE TO THE DEMILITARIZED STATUS OF BERLIN IN THE WESTERN SECTORS OF THE CITY IS IN CONTRAST TO THE DAILY VIOLATIONS OF THIS STATUS IN THE EASTERN SECTOR FOR WHICH THE SOVIET AUTHORITIES HAVE RESPONSIBILITY. END TEXT.

6. COMMENT: ONLY SPECIAL NUANCE WE NOTED IN SOVIET STATEMENT IS AT END OF PENULTIMATE PARAGRAPH. SOVIETS SLIGHTLY MISQUOTE QA BY SAYING THAT THAT AGREEMENT ESTABLISHED THAT WESTERN SECTORS "ARE NOT A CONSTITUENT PART OF FRG AND WILL NOT BE GOVERNED BY IT IN FUTURE." SOVIETS ACCENTUATED SLIGHT LINGUISTIC DISCREPANCY IN CONFIDENTIAL

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ENGLISH AND RUSSIAN VERSIONS AS AT THIS POINT OF QA BY DROPPING RUSSIAN WORDS TRANSLATING INTO "AS BEFORE" WHICH GAVE QA MEANING IN WESTERN VIEW THAT PREVIOUSLY EXISTING SITUATION HAD SIMPLY BEEN CONFIRMED. MANNER IN WHICH THIS IS PRESENTED IN CURRENT SOVIET STATEMENT SUGGESTS THAT QA REFERS MORE TO FUTURE THAN TO PAST AND HAS SOMETHING OF IMPLICATION THAT ALLIES ACCEPTED COMMITMENT TO REDUCE FEDERAL PRESENT IN SIGNING QA. WE FEEL, HOWEVER, THAT IT IS BETTER TO ATTEMPT TO REBUT SOVIET STATEMENT BY COMBINATION OF POINTING OUT FACTUAL ERROR AND FIRMLY BUT GENERALLY STATING ALLIED POSITION THAN TO FALL INTO PATTERN OF CITING CHUNKS OF QA BACK TO THEM AND RISKING BECOMING EMBROILED IN DETAILED INTERPRETIVE DISCUSSION. END COMMENT. GEORGE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXPLOSIVES, COURT DECISIONS, DIPLOMATIC PROTESTS
Control Number: n/a
Copy: SINGLE
Draft Date: 12 FEB 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: coburnhl
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976USBERL00256
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760054-0625
From: USBERLIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760253/aaaabuoj.tel
Line Count: 168
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 USBERLIN 247
Review Action: RELEASED, APPROVED
Review Authority: coburnhl
Review Comment: n/a
Review Content Flags:
Review Date: 22 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <22 APR 2004 by greeneet>; APPROVED <10 AUG 2004 by coburnhl>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: SOVIET PROTEST AT FEDERAL ADMINISTRATIVE COURT DECISION
TAGS: PGOV, PFOR, WB, GE, UR
To: BONN
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006